

BOARD DISTRIBUTION DRAFT – March 8, 2006

[6714-01-P]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 330

RIN 3064 –

Deposit Insurance Regulations; Inflation Index; Certain Retirement Accounts and Employee Benefit Plan Accounts

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Interim rule with request for comments.

SUMMARY: The FDIC is amending its deposit insurance regulations to implement applicable revisions to the Federal Deposit Insurance Act made by the Federal Deposit Insurance Reform Act of 2005 and the Federal Deposit Insurance Reform Conforming Amendments Act of 2005. The interim rule: (1) provides for consideration of inflation adjustments to increase the current standard maximum deposit insurance amount of \$100,000 on a five-year cycle beginning in 2010; (2) increases the deposit insurance limit for certain retirement accounts from \$100,000 to \$250,000, also subject to inflation adjustments; and (3) provides per-participant insurance coverage to employee benefit plan accounts, even if the depository institution at which the deposits are placed is not authorized to accept employee benefit plan deposits.

DATES: The interim rule is effective on April 1, 2006. Written comments must be received by the FDIC on or before [INSERT THE DATE SIXTY DAYS AFTER FR PUBLICATION DATE].

ADDRESSES: You may submit comments by any of the following methods:

- *Agency Web site:* <http://www.FDIC.gov/regulations/laws/federal/propose.html>.
Follow the instructions for submitting comments.
- *E-mail:* comments@fdic.gov.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, D.C. 20429.
- *Hand Delivered/Courier:* The guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.
- *Public Inspection:* Comments may be inspected and photocopied in the FDIC Public Information Center, 3501 North Fairfax Drive, Room E-1002, Arlington, Virginia 22226, between 9:00 a.m. and 5:00 p.m. on business days.
- *Internet Posting:* Comments received will be posted without change to <http://www.FDIC.gov/regulations/laws/federal/propose.html>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Joseph A. DiNuzzo, Counsel, (202) 898-7349, Legal Division, Federal Deposit Insurance Corporation, Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Deposit Insurance Reform Act of 2005 (“Reform Act”) (Pub. L. No. 109-171) made three substantive changes to the insurance coverage provisions of the Federal Deposit Insurance Act (12 U.S.C. 1813-1835a). First, section 2103(a) of the legislation provides for an inflation index to be applied to the current maximum deposit insurance amount of \$100,000, defined in the Reform Act as the “standard maximum deposit insurance amount” (“SMDIA”). Beginning April 1, 2010, and every succeeding five years, subject to approval by the Board of Directors of the FDIC and the National Credit Union Administration Board (“NCUA”), the current SMDIA could be increased by a cost-of-living adjustment. This adjustment is to be calculated according to the Personal Consumption Expenditures Chain-type Index published by the Department of Commerce and rounded down to the nearest \$10,000. The statute requires the FDIC and the NCUA to consider certain factors in determining whether to increase the SMDIA. If the agencies determine that an increase is warranted, the FDIC and the NCUA are required to publish the new SMDIA in the Federal Register and provide a corresponding report to Congress by April 5, 2010, and every succeeding fifth year. Thereafter, the approved adjustment will automatically occur unless a Congressional act provides otherwise and

will take effect on January 1st of the year immediately succeeding the year in which the new amount is calculated.

Second, section 2103(c) of the Reform Act increases the deposit insurance limit for certain retirement accounts from \$100,000 to \$250,000, also subject to inflation adjustments, as described above. The types of accounts within this category of coverage continue to be comprised of: individual retirement accounts (“IRAs”) described in section 408(a) of the Internal Revenue Code (“IRC”) (26 U.S.C. 408(a)); eligible deferred compensation plan accounts described in section 457 of the IRC (26 U.S.C. 457); and individual account plan accounts defined in section 3(34) of the Employee Retirement Income Security Act (“ERISA”) (29 U.S.C. 1002) and any plan described in section 401(d) of the IRC, to the extent that participants and beneficiaries under such plans have a right to direct the investment of assets held in individual accounts maintained on their behalf by the plans.

Third, section 2103(b) of the Reform Act provides per-participant coverage to employee benefit plan accounts, even if the depository institution at which the deposits are placed is not authorized to accept employee benefit plan deposits. This coverage is referred to as “pass-through” coverage because the insurance *passes through* the employee benefit plan administrator to each of the participants in the plan. As discussed below, the Reform Act eliminates the former requirement that an insured depository institution meet prescribed capital requirements before employee benefit plan deposits accepted by that institution would be eligible for pass-through coverage. As a result of the legislation, pass-through

coverage for employee benefit deposits is no longer dependent on the capital level of the institution where such deposits are placed.

Also, the Federal Deposit Insurance Reform Conforming Amendments Act of 2005 (Pub. L. No. 109-173) (“Conforming Amendments Act”) created the term “government depositor” in connection with public funds described in and insured pursuant to section 11(a)(2) of the FDI Act. 12 U.S.C. 1821(a)(2). The Conforming Amendments Act provides that the deposits of a government depositor shall be insured in an amount up to the SMDIA, subject to the inflation adjustment described above.

The purpose of this rulemaking is to implement by regulation the deposit insurance coverage revisions made by the Reform Act and the Conforming Amendments Act. The interim rule amends the applicable provisions of Part 330 of the FDIC’s regulations, entitled *Deposit Insurance Regulations* (12 CFR Part 330).

II. The Interim Rule

A. The SMDIA

The interim rule adds a definition of “standard maximum deposit insurance amount” to section 330.1 of the FDIC’s regulations (12 CFR 330.1). Tracking the language of the Reform Act, the definition is “\$100,000 adjusted pursuant to subparagraph (F) of section 11(a)(1) of the FDI Act (12 U.S.C. 1821 (a)(1)(F)).” The revised subparagraph (F) of section 11(a)(1) of the FDI Act provides the details of how, every five years, the FDIC

and the NCUA will consider and calculate the inflation adjustment to the SMDIA. The new definition in section 330.1 also indicates that the current SMDIA is \$100,000 and that the acronym “SMDIA” is used in Part 330 for the SMDIA. In addition, the definition notes that all the examples of deposit insurance coverage in Part 330 use the current SMDIA of \$100,000.

In accordance with the addition of this definition, all references in Part 330 to the current insurance amount of \$100,000 are replaced by the acronym “SMDIA.” This will avoid having to change the actual SMDIA in each provision of the regulation whenever the SMDIA is adjusted for inflation.

B. Retirement and Employee Benefit Plan Accounts

Section 330.14 is amended to reflect that pass-through coverage for employee benefit plan accounts no longer hinges on the capital level of the depository institution where such deposits are placed. Under the former law, pass-through coverage for employee benefit plan deposits was not available if the deposits were placed with an institution not permitted to accept brokered deposits. Under section 29 of the FDI Act (12 U.S.C. 1831f), only institutions that meet prescribed capital requirements may accept brokered deposits. The Reform Act takes a different approach. It prohibits insured institutions that are not “well capitalized” or “adequately capitalized” from accepting employee benefit plan deposits. But, under the Reform Act, employee benefit plan deposits accepted by

any insured depository institution, even those prohibited from accepting such deposits, are nonetheless eligible for pass-through deposit insurance coverage.

This change in the deposit insurance rules will apply to all employee benefit plan deposits, including employee benefit plan deposits placed before the effective date of the interim rule and irrespective of whether such deposits would have been eligible for pass-through coverage under the former statute and rules. The other requirements in section 330.14 of the FDIC's rules on the eligibility of employee benefit plan deposits for pass-through insurance coverage continue to apply. In particular, only the "non-contingent" interests of plan participants in an applicable plan are eligible for pass-through coverage. A "non-contingent" interest is an interest that can be determined without the evaluation of contingencies other than life expectancy.

Section 330.14 also is amended to indicate that the maximum coverage for certain retirement accounts is now \$250,000. These retirement accounts continue to be comprised of IRAs (both traditional IRAs and Roth IRAs); section 457 deferred compensation plan accounts; "self-directed" Keogh plan accounts (or "HR 10" accounts); and "self-directed" defined contribution plan accounts, which are primarily 401(k) plan accounts. The term "self-directed" continues to mean that the plan participants have the right to direct how their funds are invested, including the ability to direct that the funds be deposited at an FDIC-insured institution.

The regulatory burden associated with the capital-status information requirements in Part 330 (section 330.14(h)) has been eliminated because the insurance coverage of employee benefit plan deposits no longer hinges on a depository institution's capital level.

C. Technical Revisions

The heading for section 330.15 has been changed from "Public unit accounts" to "Accounts held by government depositors" to reflect the technical change to the corresponding statutory provision made by the Conforming Amendments Act (12 U.S.C. 1821(a)(2)). No substantive changes are made to section 330.15.

Section 330.16 of Part 330 provides effective dates for past revisions to Part 330.

Although unrelated to the deposit insurance reform legislation, section 330.16 is deleted because it is obsolete.

III. Rationale for Interim Rulemaking

The changes to the deposit insurance rules implemented by this rulemaking will benefit depositors by increasing coverage for retirement accounts and removing a limitation on the availability of pass-through insurance coverage for employee benefit plan accounts. As such, the FDIC wishes to amend its regulations to effect these changes as soon as possible. Thus, the FDIC has determined that the public notice and participation that

ordinarily are required by the Administrative Procedure Act (5 U.S.C. 553) before a regulation may take effect would, in this case, be contrary to the public interest and that good cause exists for waiving the customary 30-day delayed effective date. Nevertheless, the FDIC desires to have the benefit of public comment before adopting a permanent final rule and thus invites interested parties to submit comments during a 60-day comment period. In adopting a final regulation, the FDIC will revise the interim rule, if appropriate, in light of the comments received on the interim rule.

IV. Paperwork Reduction Act

The interim rule will implement statutory changes to the FDIC's deposit insurance regulations. It will not involve any new collections of information pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). Consequently, no information collection has been submitted to the Office of Management and Budget for review.

V. Regulatory Flexibility Act

A regulatory flexibility analysis is required only when an agency must publish a notice of proposed rulemaking (5 U.S.C. 603, 604). Because the revisions to part 330 are published in interim final form without a notice of proposed rulemaking, no regulatory flexibility analysis is required.

VI. The Treasury and General Government Appropriations Act, 1999--Assessment of Federal Regulations and Policies on Families

The FDIC has determined that the interim rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Public Law 105-277, 112 Stat. 2681).

VII. Small Business Regulatory Enforcement Fairness Act

The Office of Management and Budget has determined that the interim rule is not a “major rule” within the meaning of the relevant sections of the Small Business Regulatory Enforcement Fairness Act of 1996 (“SBREFA”) (5 U.S.C. 801 *et seq.*). As required by SBREFA, the FDIC will file the appropriate reports with Congress and the General Accounting Office so that the interim rule may be reviewed.

List of Subjects in 12 CFR Part 330

Bank deposit insurance, Banks, banking, Reporting and recordkeeping requirements, Savings and loan associations, Trusts and trustees.

For the reasons stated above, the Board of Directors of the Federal Deposit Insurance Corporation hereby amends part 330 of chapter III of title 12 of the Code of Federal Regulations as follows:

Part 330 – DEPOSIT INSURANCE COVERAGE

1. The authority citation for part 330 continues to read as follows:

Authority: 12 U.S.C. 1813(l), 1813(m), 1817(i), 1818(q), 1819 (Tenth), 1820(f), 1821(a), 1822(c).

2. Section 330.1 paragraphs (n), (o) and (p) are redesignated as (o), (p) and (q), respectively, and a new paragraph (n) is added to read as follows:

§ 330.1 Definitions.

* * * * *

(n) *Standard maximum deposit insurance amount*, referred to as “the SMDIA” hereafter, means \$100,000 adjusted pursuant to subparagraph (F) of section 11(a)(1) of the FDI Act (12 U.S.C. 1821(a)(1)(F)). The current SMDIA is \$100,000. All the examples in this regulation use the current SMDIA of \$100,000.

3. Section 330.6 paragraphs (a), (b), (c) and (d) are revised by removing “\$100,000” in each paragraph and adding in its place “the SMDIA”.

4. Section 330.7 paragraph (e) is revised by removing “\$100,000” and adding in its place “the SMDIA”.

5. Section 330.8 paragraph (a) is revised by removing “\$100,000” and adding in its place “the SMDIA”.

6. Section 330.9 paragraph (a) is revised by removing “\$200,000” and adding in its place “twice the SMDIA”, and the first sentence in paragraph (b) is revised to read as follows:

§ 330.9 Joint ownership accounts.

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(b) Determination of insurance coverage. The interests of each co-owner in all qualifying joint accounts shall be added together and the total shall be insured up to the SMDIA.

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7. Section 330.10 paragraphs (a), (c), (d) and (f)(3) are revised by removing “\$100,000” and adding in its place “the SMDIA”.

8. Section 330.11 is revised by removing “\$100,000” in the four places it appears and adding in its place “the SMDIA”.

9. Section 330.12 paragraph (a) is revised by removing “\$100,000” and adding in its place “the SMDIA”.

10. Section 330.13 is revised by removing “\$100,000” in the three places it appears and adding in its place “the SMDIA”.

11. Section 330.14 paragraph (a) is revised to read as follows:

§ 330.14 Retirement and other employee benefit plan accounts.

(a) “Pass-through” insurance. Any deposits of an employee benefit plan or any eligible deferred compensation plan described in section 457 of the Internal Revenue Code of 1986 (26 U.S.C. 457) in an insured depository institution shall be insured on a “pass-through” basis, in the amount of up to the SMDIA for the non-contingent interest of each plan participant, provided the rules in § 330.5 are satisfied.

12. Section 330.14 paragraph (b) is removed and paragraphs (c), (d), (e), (f) and (g) are redesignated, respectively, as (b), (c), (d), (e) and (f), the redesignated paragraphs (d) and (e) are revised by removing “\$100,000” and adding in its place “the SMDIA” , the reference to “(c)(2)” in the redesignated subparagraph (c)(3) is removed and replaced with “(b)(2)” and paragraph (h) is removed and the redesignated subparagraph (b)(2) is revised to read as follows:

§ 330.14 Retirement and other employee benefit plan accounts.

* * * * *

(b) * * *

(2) Certain retirement accounts. Deposits in an insured depository institution made in connection with the following types of retirement plans shall be aggregated and insured in the amount of up to \$250,000 per participant:

(A) Any individual retirement account described in section 408(a) of the Internal Revenue Code of 1986 (26 U.S.C. 408(a));

(B) Any eligible deferred compensation plan described in section 457 of the Internal Revenue Code of 1986 (12 U.S.C. 457); and

(C) Any individual account plan defined in section 3(34) of the Employee Retirement Income Security Act (ERISA) (29 U.S.C.1002) and any plan described in section 401(d) of the Internal Revenue Code of 1986 (26 U.S.C. 401(d)), to the extent that participants and beneficiaries under such plans have the right to direct the investment of assets held in individual accounts maintained on their behalf by the plans.

13. Section 330.15 is revised by removing the heading “Public unit accounts” and adding in its place “Accounts held by government depositors” and “\$100,000” is removed in the thirteen places it appears and adding in its place “the SMDIA”.

14. Section 330.16 is removed.

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By order of the Board of Directors.

Dated at Washington D.C., this 14th day of March, 2006.

FEDERAL DEPOSIT INSURANCE CORPORATION

Robert E. Feldman
Executive Secretary

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